

SENATE BILL 161

By Finney R.

AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7, Part 5; Title 39 and Title 47, Chapter 18, relative to identity theft deterrence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known, and may be cited, as the "Credit Security Act of 2007".

SECTION 2. Tennessee Code Annotated, Section 47-18-2102, is amended by inserting the following definitions as appropriately designated subdivisions thereto:

() "Consumer" means an individual who is a resident of this state;

() "Consumer report" has the meaning ascribed to that term by 15 U.S.C. § 1681a(d); and

() "Consumer reporting agency" has the meaning ascribed to that term by 15 U.S.C. § 1681a(f).

SECTION 3. Tennessee Code Annotated, Title 47, Chapter 18, Part 21, is amended by inserting Sections 4 through 7 below as new, appropriately designated sections thereto.

SECTION 4.

(a) A consumer may place a security freeze on such person's consumer report by making a request in writing or by electronic means, including through an Internet web site, to a consumer reporting agency at either the physical address or Internet web site designated by the agency to receive such requests. A security freeze shall prohibit the consumer reporting agency from releasing the requesting party's consumer report or credit score relating to the extension of credit without the express authorization of the consumer. Nothing in this section shall prevent a consumer reporting agency from

advising a third party that a security freeze is in effect with respect to a particular consumer report.

(b) A consumer reporting agency shall place a security freeze on a consumer report no later than three (3) business days after receiving the written or electronic request from the consumer.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ten (10) business days of placing the security freeze on the consumer report, and shall provide the consumer with a unique personal identification number or password, other than the consumer's federal social security number, to be used by the consumer when providing authorization for the release of the consumer report for a specific period of time or for permanently removing the security freeze.

(d) If the consumer wishes to allow the consumer report to be accessed for a specific period of time while a freeze is in place, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification;

(2) The unique personal identification number or password provided by the consumer reporting agency to the consumer pursuant to this section; and

(3) The information requested by the consumer reporting agency about the period for which the consumer report is to be available.

(e) A consumer reporting agency shall develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to this section in an expedited manner.

(f) A consumer reporting agency shall comply with a request to temporarily lift a freeze previously placed on a consumer report no later than fifteen (15) minutes after receiving the request at a point of contact designated by the agency to receive such requests for a temporary removal of the security freeze when a consumer makes such a request and provides both of the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer reporting agency to the consumer pursuant to this section.

(g) If a third party requests access to a consumer report on which a security freeze is in effect and the consumer does not allow the third party access to the consumer report, the third party may treat any applicable credit application made by the consumer as incomplete.

(h) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer report for a specific period of time while the security freeze is in place.

(i) Except as provided in subsections (d), (e), and (f), a security freeze shall remain in place until the consumer requests that the security freeze be removed permanently. A consumer reporting agency shall permanently remove a security freeze no later than fifteen (15) minutes from the receipt of a request at a point of contact designated by the agency to receive such requests for a permanent removal of the security freeze when a consumer makes such a request and provides both of the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer reporting agency to the consumer pursuant to this section.

(j) If a security freeze is in place, a consumer reporting agency shall not change a consumer's name, date of birth, federal social security number, or address on a consumer report without providing at least thirty (30) days' prior written notice to the consumer at the consumer's last known address. Written notice to the consumer is not required in order to make technical corrections to a consumer's information, including name and street abbreviations, complete spellings, or transposition of numbers or letters.

(k) A consumer reporting agency may charge a consumer a reasonable fee not to exceed five dollars (\$5.00) for the placement of a security freeze. A consumer reporting agency may not charge a consumer to temporarily lift or permanently remove a security freeze. A consumer reporting agency may not charge a consumer for the placement of a security freeze if that consumer is a victim of identity theft as defined in Section 47-18-2102 and presents to the consumer reporting agency at the time the request is made a police report or other official document acceptable to the consumer reporting agency detailing the theft.

(l) The provisions of this section, including the security freeze, do not apply to the use of a consumer report by the following:

(1) A person, or that person's subsidiary, affiliate, agent or assignee, if the consumer has an account, contract, or debtor-creditor relationship with that person, for the purposes of reviewing the account, collecting the financial obligation of the consumer, or extending additional credit to the consumer. For purposes of this subdivision (l) (1), "reviewing the account" includes activities

related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent or assignee of a party or parties for whom a security freeze has been temporarily lifted pursuant to this section for the purpose of facilitating the extension of credit or other permissible use;

(3) Any person, including, but not limited to, a law enforcement agency, collections officer or private collection agency, acting pursuant to a court order, warrant or subpoena authorizing the use of the consumer report;

(4) Any department or division of the state that is acting to investigate a child support case, Medicaid or TennCare fraud, delinquent taxes or assessments, unpaid court orders, or to fulfill any of their statutory or other duties;

(5) A consumer's use of information for the purposes of prescreening as provided by the federal Fair Credit Reporting Act;

(6) Any person for the purpose of providing a credit file monitoring subscription service to which the consumer has subscribed;

(7) A consumer reporting agency for the sole purpose of providing a consumer with a copy of the consumer report upon the consumer's request;

(8) Any person or entity for the purpose of setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;

(9) A pension plan acting to determine the consumer's eligibility for plan benefits or payments authorized by law or to investigate fraud;

(10) Any law enforcement agency or its agent acting to investigate a crime, conduct a criminal background check, conduct a pre-sentence

investigation in a criminal matter or use the information for supervision of a paroled offender; or

(11) A licensed hospital with which the consumer has or had a contract or a debtor-creditor relationship for the purpose of reviewing the account or collecting the financial obligation owing for the contract, account, or debt.

(m) The following entities are not subject to the requirements of this section; provided, however, that each such entity shall be subject to any security freeze placed on a consumer report by a consumer reporting agency from which it obtains information:

(1) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency;

(2) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; and

(3) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(n) Exclusive of all other remedies that may be imposed, any person who willfully fails to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1)

(A) Any actual damages sustained by the consumer as a result of the failure or damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000); or

(B) In the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or one thousand dollars (\$1,000), whichever is greater;

(2) Such amount of punitive damages as the court may allow; and

(3) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(o) Any person who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or one thousand dollars (\$1,000), whichever is greater.

(p) Any person who is negligent in failing to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure; and

(2) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(q) Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

SECTION 5. At any time that a consumer is required to receive a summary of rights required by 15 U.S.C. § 1681g(d) of the federal Fair Credit Reporting Act, the consumer shall also be provided with the following notice:

"Tennessee Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail or by electronic means as provided by a consumer reporting agency. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. If you are actively seeking a new credit, loan, utility, telephone, or insurance account, you should understand that the procedures involved in lifting a security freeze may slow your applications for credit. You should plan ahead and lift a freeze in advance of actually applying for new credit. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or

authorize the release of your credit report for a period of time after the freeze is in place. To provide that authorization you must contact the consumer reporting agency and provide all of the following:

- (1) The personal identification number or password.
- (2) Proper identification to verify your identity.
- (3) The proper information regarding the period of time for which the report shall be available.

A consumer reporting agency must authorize the release of your credit report no later than fifteen (15) minutes after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance.

You have a right to bring civil action against anyone, including a consumer reporting agency, who improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct inaccurate file data.

Unless you are a victim of identity theft with a police report or other official document acceptable to a consumer reporting agency to verify the crimes, a consumer reporting agency has the right to charge you up to five dollars (\$5.00) to place a freeze on your credit report, but may not charge you to temporarily lift a freeze on your credit report or to remove a freeze from your credit report.”

SECTION 6.

(a) On and after January 1, 2008, any nonprofit or for profit business entity in this state, including but not limited to any sole proprietorship, partnership, limited liability

company, or corporation, engaged in any business, including but not limited to health care, as well as the state and any political subdivision of the state, that has obtained a federal social security number for a legitimate business or governmental purpose shall make reasonable efforts to protect that social security number from disclosure to the public. Such social security numbers shall not:

(1) Be posted or displayed in public;

(2) Be printed or written on identification cards;

(3) Be required to be transmitted over the Internet, unless the Internet connection used is secure or the social security number is encrypted;

(4) Be required to log onto or access an Internet web site, unless used in combination with a password or other authentication device;

(5) Be printed on any materials mailed to a consumer, unless such disclosure is required by law or the document is a form or application; or

(6) Be used as an identifier in electronic information systems.

(b) On and after January 1, 2009, it is an offense for any person, any nonprofit business entity or for profit business entity in this state, including but not limited to any sole proprietorship, partnership, limited liability company, or corporation, engaged in any business, including but not limited to health care, as well as the state and any political subdivision of the state, to knowingly use or require the disclosure of a federal social security number for the purpose of personal identification, for the purpose of engaging in any business transaction, or for the purpose of an application for credit or for a driver license.

(c) A violation of subsection (b) is a Class B misdemeanor. Each violation of subsection (b) shall constitute a separate offense.

SECTION 7.

(a) The office of the attorney general and reporter, in cooperation with any law enforcement agency, may issue an identity theft passport to a person who is a victim of identity theft in this state and who has filed a police report indicating that the person is a victim of identity theft. A person who has filed a police report alleging identity theft may apply for an identity theft passport through any law enforcement agency. The agency shall send a copy of the application and the supporting police report to the office of the attorney general and reporter. After processing the application and police report, the office of the attorney general and reporter may issue to the victim an identity theft passport in the form of a card or certificate.

(b) A victim of identity theft may present his or her identity theft passport issued pursuant to this section to the following:

(1) A law enforcement agency, for the purpose of preventing the victim's arrest or detention for an offense committed by someone other than the victim using the victim's identity;

(2) Any of the victim's creditors, for the purpose of assisting in that creditor's investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity;

(3) A consumer reporting agency, which must accept the passport as an official notice of a dispute and must include notice of the dispute in all future reports that contain disputed information caused by the identity theft.

(c) Acceptance or rejection of an identity theft passport presented by the victim to a law enforcement agency or creditor pursuant to subdivisions (b)(1) or (b)(2) is at the discretion of the law enforcement agency or creditor. In making a decision regarding acceptance or rejection, a law enforcement agency or creditor may consider the

surrounding circumstances and available information regarding the offense of identity theft alleged by the victim.

(d) An application made to the office of attorney general and reporter pursuant to subsection (a), including any supporting documentation, is confidential criminal justice information, is not a public record, and is specifically exempt from public disclosure consistent with the materials in the possession of the office of attorney general and reporter that are exempted from public disclosure pursuant to § 10-7-503(a)(5). However, the office of attorney general and reporter may provide access to applications and supporting documentation to other criminal justice agencies within or outside of this state.

(e) The office of attorney general and reporter is authorized to promulgate rules and regulations to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5. The regulations shall include a procedure by which the office of attorney general and reporter is reasonably assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated prior to issuing an identity theft passport.

SECTION 8. Tennessee Code Annotated, Section 10-7-504(a)(5)(A), is amended by deleting the language “or” at the end of subdivision (iv); by deleting the period at the end of subdivision (v) and by substituting instead a semi-colon and the word “or”; and by inserting the following as a new subdivision to be designated as follows:

(vi) An application for an identity theft passport and any supporting documentation filed by a victim of identity theft.

SECTION 9. This act shall take effect September 1, 2007, the public welfare requiring it.